

AMENDED IN ASSEMBLY AUGUST 7, 2013

AMENDED IN SENATE MAY 13, 2013

AMENDED IN SENATE APRIL 16, 2013

SENATE BILL

No. 28

Introduced by Senators Hernandez and Steinberg

December 3, 2012

An act to amend Section 100503 of the Government Code, to amend ~~Section 12739.53 of,~~ and to add Section 12712.5 to, to the Insurance Code, and to amend Section 14011.6 of the Welfare and Institutions Code, relating to health.

LEGISLATIVE COUNSEL'S DIGEST

SB 28, as amended, Hernandez. California Health Benefit Exchange.

(1) Existing law establishes the California Major Risk Medical Insurance Program (MRMIP), which is administered by the Managed Risk Medical Insurance Board (MRMIB), to provide major risk medical coverage to persons who, among other things, have been rejected for coverage by at least one private health plan. ~~Existing law requires MRMIB to enter into an agreement with the federal Department of Health and Human Services to administer a temporary high risk pool to provide health coverage, until January 1, 2014, to specified individuals who have preexisting conditions, consistent with the federal Patient Protection and Affordable Care Act (PPACA).~~

Under PPACA, each state is required, by January 1, 2014, to establish an American Health Benefit Exchange that makes available qualified health plans to qualified individuals and small employers. Existing state law establishes the California Health Benefit Exchange (Exchange) within state government, specifies the powers and duties of the board

governing the Exchange, and requires the board to facilitate the purchase of qualified health plans through the Exchange by qualified individuals and small employers by January 1, 2014. Existing law also requires the board to undertake activities necessary to market and publicize the availability of health care coverage and federal ~~subsidizes~~ *subsidies* through the Exchange and to undertake outreach and enrollment activities.

This bill would require MRMIB to provide the Exchange, or its designee, with specified information of subscribers and applicants of MRMIP ~~and the temporary high risk pool~~ in order to assist the Exchange in conducting outreach to those subscribers and applicants.

The bill would require the board governing the Exchange to provide a specified notice informing those subscribers and applicants that they may be eligible for reduced-cost coverage through the Exchange or no-cost coverage through Medi-Cal.

(2) Existing law provides for the Medi-Cal program, which is administered by the State Department of Health Care Services, under which qualified low-income individuals receive health care services. The Medi-Cal program is, in part, governed and funded by federal Medicaid Program provisions.

Existing law requires, to the extent that federal financial participation is available, that the department implement an option provided for under the federal Social Security Act for a program for accelerated enrollment of children into the Medi-Cal program. Existing law requires the department to designate the single point of entry, as defined, as the qualified entity for determining eligibility under these provisions.

This bill would, commencing October 1, 2013, require the department to designate the Exchange and its agents, and specified county departments as qualified entities for determining eligibility under the above-mentioned provisions. The bill would also require the qualified entity to grant accelerated enrollment if a complete eligibility determination cannot be made based upon the receipt of an application for a child at the time of the initial application and the child is eligible for accelerated enrollment.

Because the bill would require counties to make additional Medi-Cal eligibility determinations, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 100503 of the Government Code is
2 amended to read:
3 100503. In addition to meeting the minimum requirements of
4 Section 1311 of the federal act, the board shall do all of the
5 following:
6 (a) Determine the criteria and process for eligibility, enrollment,
7 and disenrollment of enrollees and potential enrollees in the
8 Exchange and coordinate that process with the state and local
9 government entities administering other health care coverage
10 programs, including the State Department of Health Care Services,
11 the Managed Risk Medical Insurance Board, and California
12 counties, in order to ensure consistent eligibility and enrollment
13 processes and seamless transitions between coverage.
14 (b) Develop processes to coordinate with the county entities
15 that administer eligibility for the Medi-Cal program and the entity
16 that determines eligibility for the Healthy Families Program,
17 including, but not limited to, processes for case transfer, referral,
18 and enrollment in the Exchange of individuals applying for
19 assistance to those entities, if allowed or required by federal law.
20 (c) Determine the minimum requirements a carrier must meet
21 to be considered for participation in the Exchange, and the
22 standards and criteria for selecting qualified health plans to be
23 offered through the Exchange that are in the best interests of
24 qualified individuals and qualified small employers. The board
25 shall consistently and uniformly apply these requirements,
26 standards, and criteria to all carriers. In the course of selectively
27 contracting for health care coverage offered to qualified individuals
28 and qualified small employers through the Exchange, the board
29 shall seek to contract with carriers so as to provide health care
30 coverage choices that offer the optimal combination of choice,
31 value, quality, and service.

1 (d) Provide, in each region of the state, a choice of qualified
2 health plans at each of the five levels of coverage contained in
3 subdivisions (d) and (e) of Section 1302 of the federal act.

4 (e) Require, as a condition of participation in the Exchange,
5 carriers to fairly and affirmatively offer, market, and sell in the
6 Exchange at least one product within each of the five levels of
7 coverage contained in subdivisions (d) and (e) of Section 1302 of
8 the federal act. The board may require carriers to offer additional
9 products within each of those five levels of coverage. This
10 subdivision shall not apply to a carrier that solely offers
11 supplemental coverage in the Exchange under paragraph (10) of
12 subdivision (a) of Section 100504.

13 (f) (1) Require, as a condition of participation in the Exchange,
14 carriers that sell any products outside the Exchange to do both of
15 the following:

16 (A) Fairly and affirmatively offer, market, and sell all products
17 made available to individuals in the Exchange to individuals
18 purchasing coverage outside the Exchange.

19 (B) Fairly and affirmatively offer, market, and sell all products
20 made available to small employers in the Exchange to small
21 employers purchasing coverage outside the Exchange.

22 (2) For purposes of this subdivision, “product” does not include
23 contracts entered into pursuant to Part 6.2 (commencing with
24 Section 12693) of Division 2 of the Insurance Code between the
25 Managed Risk Medical Insurance Board and carriers for enrolled
26 Healthy Families beneficiaries or contracts entered into pursuant
27 to Chapter 7 (commencing with Section 14000) of, or Chapter 8
28 (commencing with Section 14200) of, Part 3 of Division 9 of the
29 Welfare and Institutions Code between the State Department of
30 Health Care Services and carriers for enrolled Medi-Cal
31 beneficiaries.

32 (g) Determine when an enrollee’s coverage commences and the
33 extent and scope of coverage.

34 (h) Provide for the processing of applications and the enrollment
35 and disenrollment of enrollees.

36 (i) Determine and approve cost-sharing provisions for qualified
37 health plans.

38 (j) Establish uniform billing and payment policies for qualified
39 health plans offered in the Exchange to ensure consistent

1 enrollment and disenrollment activities for individuals enrolled in
2 the Exchange.

3 (k) (1) Undertake activities necessary to market and publicize
4 the availability of health care coverage and federal subsidies
5 through the Exchange. The board shall also undertake outreach
6 and enrollment activities that seek to assist enrollees and potential
7 enrollees with enrolling and reenrolling in the Exchange in the
8 least burdensome manner, including populations that may
9 experience barriers to enrollment, such as the disabled and those
10 with limited English language proficiency.

11 (2) Use the information received pursuant to Section 12712.5
12 ~~of, and paragraph (10) of subdivision (b) of Section 12739.53 of,~~
13 ~~of the Insurance Code to provide an individual a notice that he or~~
14 ~~she may be eligible for reduced-cost coverage through the~~
15 ~~Exchange or no-cost coverage through Medi-Cal. The notice shall~~
16 ~~include information on obtaining coverage pursuant to those~~
17 ~~programs.~~

18 (l) Select and set performance standards and compensation for
19 navigators selected under subdivision (l) of Section 100502.

20 (m) Employ necessary staff.

21 (1) The board shall hire a chief fiscal officer, a chief operations
22 officer, a director for the SHOP Exchange, a director of Health
23 Plan Contracting, a chief technology and information officer, a
24 general counsel, and other key executive positions, as determined
25 by the board, who shall be exempt from civil service.

26 (2) (A) The board shall set the salaries for the exempt positions
27 described in paragraph (1) and subdivision (i) of Section 100500
28 in amounts that are reasonably necessary to attract and retain
29 individuals of superior qualifications. The salaries shall be
30 published by the board in the board's annual budget. The board's
31 annual budget shall be posted on the Internet Web site of the
32 Exchange. To determine the compensation for these positions, the
33 board shall cause to be conducted, through the use of independent
34 ~~outside advisors; advisers,~~ salary surveys of both of the following:

35 (i) Other state and federal health insurance exchanges that are
36 most comparable to the Exchange.

37 (ii) Other relevant labor pools.

38 (B) The salaries established by the board under subparagraph
39 (A) shall not exceed the highest comparable salary for a position

1 of that type, as determined by the surveys conducted pursuant to
2 subparagraph (A).

3 (C) The Department of Human Resources shall review the
4 methodology used in the surveys conducted pursuant to
5 subparagraph (A).

6 (3) The positions described in paragraph (1) and subdivision (i)
7 of Section 100500 shall not be subject to otherwise applicable
8 provisions of the Government Code or the Public Contract Code
9 and, for those purposes, the Exchange shall not be considered a
10 state agency or public entity.

11 (n) Assess a charge on the qualified health plans offered by
12 carriers that is reasonable and necessary to support the
13 development, operations, and prudent cash management of the
14 Exchange. This charge shall not affect the requirement under
15 Section 1301 of the federal act that carriers charge the same
16 premium rate for each qualified health plan whether offered inside
17 or outside the Exchange.

18 (o) Authorize expenditures, as necessary, from the California
19 Health Trust Fund to pay program expenses to administer the
20 Exchange.

21 (p) Keep an accurate accounting of all activities, receipts, and
22 expenditures, and annually submit to the United States Secretary
23 of Health and Human Services a report concerning that accounting.
24 Commencing January 1, 2016, the board shall conduct an annual
25 audit.

26 (q) (1) Annually prepare a written report on the implementation
27 and performance of the Exchange functions during the preceding
28 fiscal year, including, at a minimum, the manner in which funds
29 were expended and the progress toward, and the achievement of,
30 the requirements of this title. This report shall be transmitted to
31 the Legislature and the Governor and shall be made available to
32 the public on the Internet Web site of the Exchange. A report made
33 to the Legislature pursuant to this subdivision shall be submitted
34 pursuant to Section 9795.

35 (2) In addition to the report described in paragraph (1), the board
36 shall be responsive to requests for additional information from the
37 Legislature, including providing testimony and commenting on
38 proposed state legislation or policy issues. The Legislature finds
39 and declares that activities including, but not limited to, responding
40 to legislative or executive inquiries, tracking and commenting on

1 legislation and regulatory activities, and preparing reports on the
2 implementation of this title and the performance of the Exchange,
3 are necessary state requirements and are distinct from the
4 promotion of legislative or regulatory modifications referred to in
5 subdivision (d) of Section 100520.

6 (r) Maintain enrollment and expenditures to ensure that
7 expenditures do not exceed the amount of revenue in the fund, and
8 if sufficient revenue is not available to pay estimated expenditures,
9 institute appropriate measures to ensure fiscal solvency.

10 (s) Exercise all powers reasonably necessary to carry out and
11 comply with the duties, responsibilities, and requirements of this
12 act and the federal act.

13 (t) Consult with stakeholders relevant to carrying out the
14 activities under this title, including, but not limited to, all of the
15 following:

16 (1) Health care consumers who are enrolled in health plans.

17 (2) Individuals and entities with experience in facilitating
18 enrollment in health plans.

19 (3) Representatives of small businesses and self-employed
20 individuals.

21 (4) The State Medi-Cal Director.

22 (5) Advocates for enrolling hard-to-reach populations.

23 (u) Facilitate the purchase of qualified health plans in the
24 Exchange by qualified individuals and qualified small employers
25 no later than January 1, 2014.

26 (v) Report, or contract with an independent entity to report, to
27 the Legislature by December 1, 2018, on whether to adopt the
28 option in paragraph (3) of subdivision (c) of Section 1312 of the
29 federal act to merge the individual and small employer markets.
30 In its report, the board shall provide information, based on at least
31 two years of data from the Exchange, on the potential impact on
32 rates paid by individuals and by small employers in a merged
33 individual and small employer market, as compared to the rates
34 paid by individuals and small employers if a separate individual
35 and small employer market is maintained. A report made pursuant
36 to this subdivision shall be submitted pursuant to Section 9795.

37 (w) With respect to the SHOP Program, collect premiums and
38 administer all other necessary and related tasks, including, but not
39 limited to, enrollment and plan payment, in order to make the

1 offering of employee plan choice as simple as possible for qualified
2 small employers.

3 (x) Require carriers participating in the Exchange to immediately
4 notify the Exchange, under the terms and conditions established
5 by the board when an individual is or will be enrolled in or
6 disenrolled from any qualified health plan offered by the carrier.

7 (y) Ensure that the Exchange provides oral interpretation
8 services in any language for individuals seeking coverage through
9 the Exchange and makes available a toll-free telephone number
10 for the hearing and speech impaired. The board shall ensure that
11 written information made available by the Exchange is presented
12 in a plainly worded, easily understandable format and made
13 available in prevalent languages.

14 SEC. 2. Section 12712.5 is added to the Insurance Code, to
15 read:

16 12712.5. In order to assist the California Health Benefit
17 Exchange, established under Title 22 (commencing with Section
18 100500) of the Government Code, in conducting outreach to
19 program subscribers and applicants, the board shall provide the
20 Exchange, or its designee, with the names, addresses, email
21 addresses, telephone numbers, other contact information, and
22 written and spoken languages of program subscribers and
23 applicants.

24 ~~SEC. 3. Section 12739.53 of the Insurance Code is amended~~
25 ~~to read:~~

26 ~~12739.53.—(a) The board shall, consistent with Section 1101~~
27 ~~of the federal Patient Protection and Affordable Care Act (P.L.~~
28 ~~111-148) and state and federal law and contingent on the agreement~~
29 ~~of the federal Department of Health and Human Services and~~
30 ~~receipt of sufficient federal funding, enter into an agreement with~~
31 ~~the federal Department of Health and Human Services to administer~~
32 ~~the federal temporary high risk pool in California.~~

33 ~~(b) If the federal Department of Health and Human Services~~
34 ~~and the state enter into an agreement to administer the federal~~
35 ~~temporary high risk pool, the board shall do all of the following:~~

36 ~~(1) Administer the program pursuant to that agreement.~~

37 ~~(2) Begin providing coverage in the program on the date~~
38 ~~established pursuant to the agreement with the federal Department~~
39 ~~of Health and Human Services.~~

1 ~~(3) Establish the scope and content of high risk medical~~
2 ~~coverage.~~

3 ~~(4) Determine reasonable minimum standards for participating~~
4 ~~health plans, third-party administrators, and other contractors.~~

5 ~~(5) Determine the time, manner, method, and procedures for~~
6 ~~withdrawing program approval from a plan, third-party~~
7 ~~administrator, or other contractor, or limiting enrollment of~~
8 ~~subscribers in a plan.~~

9 ~~(6) Research and assess the needs of persons without adequate~~
10 ~~health coverage and promote means of ensuring the availability~~
11 ~~of adequate health care services.~~

12 ~~(7) Administer the program to ensure the following:~~

13 ~~(A) That the program subsidy amount does not exceed amounts~~
14 ~~transferred to the fund pursuant to this part.~~

15 ~~(B) That the aggregate amount spent for high risk medical~~
16 ~~coverage and program administration does not exceed the federal~~
17 ~~funds available to the state for this purpose and that no state funds~~
18 ~~are spent for the purposes of this part.~~

19 ~~(8) Maintain enrollment and expenditures to ensure that~~
20 ~~expenditures do not exceed amounts available in the fund and that~~
21 ~~no state funds are spent for purposes of this part. If sufficient funds~~
22 ~~are not available to cover the estimated cost of program~~
23 ~~expenditures, the board shall institute appropriate measures to limit~~
24 ~~enrollment.~~

25 ~~(9) In adopting benefit and eligibility standards, be guided by~~
26 ~~the needs and welfare of persons unable to secure adequate health~~
27 ~~coverage for themselves and their dependents and by prevailing~~
28 ~~practices among private health plans.~~

29 ~~(10) (A) As required by the federal Department of Health and~~
30 ~~Human Services, implement procedures to provide for the transition~~
31 ~~of subscribers into qualified health plans offered through the~~
32 ~~California Health Benefit Exchange established pursuant to Title~~
33 ~~22 (commencing with Section 100500) of the Government Code.~~

34 ~~(B) In order to assist the Exchange in conducting outreach to~~
35 ~~program subscribers and applicants, provide the Exchange, or its~~
36 ~~designee, with the names, addresses, email addresses, telephone~~
37 ~~numbers, other contact information, and written and spoken~~
38 ~~languages of program subscribers and applicants.~~

39 ~~(11) Post on the board's Internet Web site the monthly progress~~
40 ~~reports submitted to the federal Department of Health and Human~~

1 ~~Services. In addition, the board shall provide notice of any~~
2 ~~anticipated waiting lists or disenrollments due to insufficient~~
3 ~~funding to the public, by making that notice available as part of~~
4 ~~its board meetings, and concurrently to the Legislature.~~

5 ~~(12) Develop and implement a plan for marketing and outreach.~~

6 ~~(e) There shall not be any liability in a private capacity on the~~
7 ~~part of the board or any member of the board, or any officer or~~
8 ~~employee of the board for or on account of any act performed or~~
9 ~~obligation entered into in an official capacity, when done in good~~
10 ~~faith, without intent to defraud, and in connection with the~~
11 ~~administration, management, or conduct of this part or affairs~~
12 ~~related to this part.~~

13 ~~SEC. 4.~~

14 *SEC. 3.* Section 14011.6 of the Welfare and Institutions Code
15 is amended to read:

16 14011.6. (a) To the extent federal financial participation is
17 available, the department shall exercise the option provided in
18 Section 1920a of the federal Social Security Act (42 U.S.C. Sec.
19 1396r-1a) to implement a program for accelerated enrollment of
20 children.

21 (b) The department shall designate the single point of entry, as
22 defined in subdivision (c), as the qualified entity for determining
23 eligibility under this section.

24 (c) For purposes of this section, “single point of entry” means
25 the centralized processing entity that accepts and screens
26 applications for benefits under the Medi-Cal program for the
27 purpose of forwarding them to the appropriate counties.

28 (d) Commencing October 1, 2013, the department shall designate
29 the California Health Benefit Exchange, established under Title
30 22 (commencing with Section 100500) of the Government Code,
31 and its agents and county human services departments as qualified
32 entities for determining eligibility for accelerated enrollment under
33 this section.

34 (e) The department shall implement this section only if, and to
35 the extent that, federal financial participation is available.

36 (f) The department shall seek federal approval of any state plan
37 amendments necessary to implement this section. When federal
38 approval of the state plan amendment or amendments is received,
39 the department shall commence implementation of this section on
40 the first day of the second month following the month in which

1 federal approval of the state plan amendment or amendments is
2 received, or on July 1, 2002, whichever is later.

3 (g) Notwithstanding Chapter 3.5 (commencing with Section
4 11340) of Part 1 of Division 3 of Title 2 of the Government Code,
5 the department shall, without taking any regulatory action,
6 implement this section by means of all-county letters. Thereafter,
7 the department shall adopt regulations in accordance with the
8 requirements of Chapter 3.5 (commencing with Section 11340) of
9 Part 1 of Division 3 of Title 2 of the Government Code.

10 (h) Upon the receipt of an application for a child who has
11 coverage pursuant to the accelerated enrollment program, a county
12 shall determine whether the child is eligible for Medi-Cal benefits.
13 If the county determines that the child does not meet the eligibility
14 requirements for participation in the Medi-Cal program, the county
15 shall report this finding to the Medical Eligibility Data System so
16 that accelerated enrollment coverage benefits are discontinued.
17 The information to be reported shall consist of the minimum data
18 elements necessary to discontinue that coverage for the child. This
19 subdivision shall become operative on July 1, 2002, or the date
20 that the program for accelerated enrollment coverage for children
21 takes effect, whichever is later.

22 (i) If a complete eligibility determination cannot be made based
23 upon the receipt of an application for a child at the time of the
24 initial application, the qualified entity shall grant accelerated
25 enrollment pursuant to this section to the child if he or she is
26 eligible for accelerated enrollment.

27 ~~SEC. 5.~~

28 *SEC. 4.* If the Commission on State Mandates determines that
29 this act contains costs mandated by the state, reimbursement to
30 local agencies and school districts for those costs shall be made
31 pursuant to Part 7 (commencing with Section 17500) of Division
32 4 of Title 2 of the Government Code.